

Assembly Bill No. 1967

Passed the Assembly August 21, 2014

Chief Clerk of the Assembly

Passed the Senate August 20, 2014

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 14124.24 of the Welfare and Institutions Code, relating to Medi-Cal.

LEGISLATIVE COUNSEL'S DIGEST

AB 1967, Pan. Drug Medi-Cal.

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid Program provisions. Existing law establishes the Drug Medi-Cal Treatment Program (Drug Medi-Cal) under which the department is authorized to enter into contracts with counties for various drug treatment services to Medi-Cal recipients, or is required to directly arrange for these services if a county elects not to do so. Existing law requires a county to negotiate contracts only with providers certified to provide Drug Medi-Cal services. Existing law defines Drug Medi-Cal reimbursable services for purposes of these provisions.

This bill would require the department to promptly notify the behavioral health director, or his or her equivalent, of each county that currently contracts with a certified provider for Drug Medi-Cal services if the department has commenced or concluded a preliminary criminal investigation, as defined, of the provider. This bill would require that any communication between the department and a county specific to the commencement or conclusion of a preliminary criminal investigation is confidential and not subject to disclosure pursuant to, among other things, the California Public Records Act. This bill would prohibit a county from taking any adverse action against a provider solely upon the preliminary criminal information disclosed to the county. This bill would authorize the department to notify the county if a preliminary criminal investigation of a county owned or operated program is commenced or concluded by the department. The bill would also make technical, nonsubstantive changes to the definition of Drug Medi-Cal reimbursable services.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

The people of the State of California do enact as follows:

SECTION 1. Section 14124.24 of the Welfare and Institutions Code is amended to read:

14124.24. (a) For purposes of this section, “Drug Medi-Cal reimbursable services” means the substance use disorder services described in the California State Medicaid Plan and includes, but is not limited to, all of the following services, administered by the department, and to the extent consistent with state and federal law:

(1) Narcotic treatment program services, as set forth in Section 14021.51.

(2) Day care rehabilitative services.

(3) Perinatal residential services for pregnant women and women in the postpartum period.

(4) Naltrexone services.

(5) Outpatient drug-free services.

(6) Other services upon approval of a federal Medicaid state plan amendment or waiver authorizing federal financial participation.

(b) (1) While seeking federal approval for any federal Medicaid state plan amendment or waiver associated with Drug Medi-Cal services, the department shall consult with the counties and stakeholders in the development of the state plan amendment or waiver.

(2) Upon federal approval of a federal Medicaid state plan amendment authorizing federal financial participation in the following services, and subject to appropriation of funds, “Drug Medi-Cal reimbursable services” shall also include the following services, administered by the department, and to the extent consistent with state and federal law:

(A) Notwithstanding subdivision (a) of Section 14132.90, day care habilitative services, which, for purposes of this paragraph,

are outpatient counseling and rehabilitation services provided to persons with substance use disorder diagnoses.

(B) Case management services, including supportive services to assist persons with substance use disorder diagnoses in gaining access to medical, social, educational, and other needed services.

(C) Aftercare services.

(c) (1) The nonfederal share for Drug Medi-Cal services shall be funded through a county's Behavioral Health Subaccount of the Support Services Account of the Local Revenue Fund 2011, and any other available county funds eligible under federal law for federal Medicaid reimbursement. The funds contained in each county's Behavioral Health Subaccount of the Support Services Account of the Local Revenue Fund 2011 shall be considered state funds distributed by the principal state agency for the purposes of receipt of the federal block grant funds for prevention and treatment of substance abuse found at Subchapter XVII of Chapter 6A of Title 42 of the United States Code. Pursuant to applicable federal Medicaid law and regulations including Section 433.51 of Title 42 of the Code of Federal Regulations, counties may claim allowable Medicaid federal financial participation for Drug Medi-Cal services based on the counties certifying their actual total funds expenditures for eligible Drug Medi-Cal services to the department.

(2) (A) If the director determines that a county's provision of Drug Medi-Cal treatment services are disallowed by the federal government or by state or federal audit or review, the impacted county shall be responsible for repayment of all disallowed federal funds. In addition to any other recovery methods available, including, but not limited to, offset of Medicaid federal financial participation funds owed to the impacted county, the director may offset these amounts in accordance with Section 12419.5 of the Government Code.

(B) A county subject to an action by the director pursuant to subparagraph (A) may challenge that action by requesting a hearing in writing no later than 30 days from receipt of notice of the department's action. The proceeding shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director has all the powers granted therein. Upon a county's timely request for hearing, the county's obligation to make payment as

determined by the director shall be stayed pending the county's exhaustion of administrative remedies provided herein but no longer than will ensure the department's compliance with Section 1903(d)(2)(C) of the federal Social Security Act (42 U.S.C. Sec. 1396b).

(d) Drug Medi-Cal services are only reimbursable to Drug Medi-Cal providers with an approved Drug Medi-Cal contract.

(e) Counties shall negotiate contracts only with providers certified to provide Drug Medi-Cal services.

(f) The department shall develop methods to ensure timely payment of Drug Medi-Cal claims.

(g) (1) A county or a contracted provider, except for a provider to whom subdivision (h) applies, shall submit accurate and complete cost reports for the previous fiscal year by November 1, following the end of the fiscal year. The department may settle Drug Medi-Cal reimbursable services, based on the cost report as the final amendment to the approved county Drug Medi-Cal contract.

(2) Amounts paid for services provided to Drug Medi-Cal beneficiaries shall be audited by the department in the manner and form described in Section 14170.

(3) Administrative appeals to review grievances or complaints arising from the findings of an audit or examination made pursuant to this section shall be subject to Section 14171.

(h) Certified narcotic treatment program providers that are exclusively billing the state or the county for services rendered to persons subject to Section 1210.1 or 3063.1 of the Penal Code or Section 14021.52 of this code shall submit accurate and complete performance reports for the previous state fiscal year by November 1 following the end of that fiscal year. A provider to which this subdivision applies shall estimate its budgets using the uniform state daily reimbursement rate. The format and content of the performance reports shall be mutually agreed to by the department, the County Alcohol and Drug Program Administrators' Association of California, and representatives of the treatment providers.

(i) Contracts entered into pursuant to this section shall be exempt from the requirements of Chapter 1 (commencing with Section 10100) and Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(j) Annually, the department shall publish procedures for contracting for Drug Medi-Cal services with certified providers and for claiming payments, including procedures and specifications for electronic data submission for services rendered.

(k) If the department commences a preliminary criminal investigation of a certified provider, the department shall promptly notify each county that currently contracts with the provider for Drug Medi-Cal services that a preliminary criminal investigation has commenced. If the department concludes a preliminary criminal investigation of a certified provider, the department shall promptly notify each county that currently contracts with the provider for Drug Medi-Cal services that a preliminary criminal investigation has concluded.

(1) Notice of the commencement and conclusion of a preliminary criminal investigation pursuant to this section shall be made to the county behavioral health director or his or her equivalent.

(2) Communication between the department and a county specific to the commencement or conclusion of a preliminary criminal investigation pursuant to this section shall be deemed confidential and shall not be subject to any disclosure request, including, but not limited to, the Information Practices Act of 1997 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Code of Civil Procedure), the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), requests pursuant to a subpoena, or for any other public purpose, including, but not limited to, court testimony.

(3) Information shared by the department with a county regarding a preliminary criminal investigation shall be maintained in a manner to ensure protection of the confidentiality of the criminal investigation.

(4) The information provided to a county pursuant to this section shall only include the provider name, national provider identifier (NPI) number, address, and the notice that an investigation has commenced or concluded.

(5) A county shall not take any adverse action against a provider based solely upon the preliminary criminal investigation information disclosed to the county pursuant to this section.

(6) In the event of a preliminary criminal investigation of a county owned or operated program, the department has the option to, but is not required to, notify the county pursuant to this section when the department commences or concludes a preliminary criminal investigation.

(7) This section shall not limit the voluntary or otherwise legally mandated or contractually mandated sharing of information between the department and a county of information regarding audits and investigations of Drug Medi-Cal providers.

(8) “Commenced” means the time at which a complaint or allegation is assigned to an investigator for a field investigation.

(9) “Preliminary criminal investigation” means an investigation to gather information to determine if criminal law or statutes have been violated.

SEC. 2. The Legislature finds and declares that Section 1 of this act, which amends Section 14124.24 of the Welfare and Institutions Code, imposes a limitation on the public’s right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

The Legislature finds and declares that in order to protect the rights of Drug Medi-Cal providers during a preliminary criminal investigation, including, but not limited to, due process and privacy rights, the limitations on the public’s right of access imposed by Section 1 of this act are necessary.

Approved _____, 2014

Governor